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A State Which Dwarfs its Men
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An honourable bench of our august Supreme Court consisting of Mr Justice Maqbool Baqar and Mr Justice Mazhar Alam Khan Miankhel, begin their historic judgment in the case of Khawaja Saad Rafique, a veteran political worker, with a quote from 'On Liberty', a epoch-making book by the famous utilitarian English philosopher John Stuart Mill (d. 1873): 'A state which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes, will find that with small men no great thing can really be accomplished'.

The Lordships have hit the rightest cord and highlighted the real issue plaguing our society. It is undeniable fact that process and institution of human bondage and enslavement has a far-reaching impact on society. It is against human dignity and honour. In slavery, the circle of human activity shrinks, in freedom it expands: man can utilise his capabilities to the fullest and his creative faculties come into play. Iqbal has aptly and beautifully explained the very reason why this 'docility' cannot create a great thing:

'The rivulet of life dries up in slavery and in freedom, is a shore-less ocean.' It is rightly held that Islam has conferred upon human beings the highest level of dignity. Islam denounced and fought against human bondage in all its manifestations. It took practical steps to minimize and abolish this scourge from the face of the Earth. It taught humanity the lesson of freedom. Let us recall the historic statement of Hazrat Umar (RA). An Egyptian came to Hazrat Umar (RA) and said, I competed with the son of Amr-ibn-Al-Aas and I won, but he started striking me with a whip and saying: I am the son of the dignified!' Hazrat Umar (RA) summoned Amr along with his son. When he came, Hazrat Umar (RA) gave the Egyptian a whip and told him to strike the son of Amr. The man started striking him while Hazrat Umar (RA) was saying, 'Strike the son of the illiterates!' Then Hazrat Umar (RA) said to the Egyptian, 'Direct it to Amr'. The Egyptian said, 'O leader of the

believers, it was only his son who struck me and I have settled the score'. Hazrat Umar (RA) said to Amr, 'The mothers have given birth to free men. Why do you enslave them?'

This is a more meaningful statement than that of Rousseau (d.1778): 'Man is born free but everywhere he is in chains'. Rousseau simply stated the fact, whereas Hazrat Umar (RA) denounced slavery and declared freedom for all, more than one thousand years before Rousseau. In this incident, boasting of being a 'son of the dignified' is considered a form of enslavement: what an exacting standard of human liberty.

This doctrine of human freedom was poetically stated by the envoy of Saad Ibn Waqas. Before the Battle of al-Qadisiyyah, (636 AD), Rustam, the commander of the Persian army, sent a message to the Muslim commander, Saad bin Waqas, asking him to send an emissary for talks. Saad deputed Rabia bin Amir as the envoy. Rustam asked Rabia why they had come to Persia and what their mission was. Rabia said 'Allah has sent us to deliver you from worshiping the creation to worshiping the Creator of the creation and to deliver you from the constriction of this world to the vastness of this world and the afterlife and from the oppression of the religions to the justice of Islam.'

After referring to Magna Carta, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, US Constitution, legal philosophers like John Locke, Ronald Dworkin and various precedents, the judgment approves that life and personal liberty are the most prized possessions of an individual; respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society; life bereft of liberty would be without honour and dignity and it would lose all significance and meaning; and this is why liberty is called the very quintessence of a civilized existence.

The Lordships have very correctly held that this country has been achieved through the enormous sacrifices and relentless struggle of our forefathers, with a clear vision for an independent democratic state, wherein the principle of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed and wherein the State shall exercise its powers and authority through the chosen representative of the people, as a sacred trust, and wherein shall be guaranteed fundamental rights.

The judgment, thereafter, bemoans that even after 73 years since the creation of our country, the people of Pakistan are frequently denied their constitutionally guaranteed rights and democratic norms are flouted with impunity. The judgment enumerates all the legal instruments starting from "Public and Representative Offices (Disqualification) Act, 1949 (PRODA) providing for debarring or disqualifying our politician/holder of public offices, and/or putting them on trial in the name of cleansing the fountainheads of governance, with the observations that these laws were framed and applied with an oblique motive of arm twisting and pressurizing political opponents into submission, or remove them from the electoral scene at least temporarily, or to change political loyalties, for splintering and fracturing political parties; pygmies were selected, nurtured, promoted, and brought to prominence and power.

Pakistan is a democratic state and a democratic state by definition is a system of governance where the rulers are held accountable by its citizens. Democracy is rule by the people, where there is a rule of law that allows all the people to freely and fairly elect/chose accountable leaders, who in return serve the people/electors as a part of the social contract. Locke (d. 1679) and Kant (d.1793) argued that the sovereign people play a protective role with regard to citizens' liberties in general and against despotic power in particular. JS Mill sought to define the nature and limits of the power which can be legitimately exercised by society (state) over the individual, and as such, he describes an inherent and continuous antagonism between liberty and authority and thus, the prevailing question becomes how to make the fitting adjustment between individual independence and social control. These protections and adjustments are made in the national social contracts, ours is the 1973 Constitution that enshrines all the Fundamental Rights that are conceived by Islam or international human right regime.

The founding fathers of our social contract knew very well that (i) liberty provides a base level of the required intellectual, spiritual, political, social and economic diversity; (ii) free societies lead to better economies and social development; (iii) freedom leads to more stable, progressive and healthy societies; (iv) high levels of liberty lead to more contented and happier citizens; (v) greater political liberty often leads to greater cultural and artistic expressions; (vi) political liberty is the foundation of personal transcendence. Therefore, our Constitution lays the greatest possible emphasis on the fundamental doctrine of freedom, expressed in many facets, knowing the very fact

that a healthy and progressive society cannot consist of dwarfs (daolay shah key choohay), as rightly held by the Lordships.

We, unfortunately, have dwarfed our people by brute power; hence, we lag behind in most of the global indicators, sometimes lowers than even tiny far-off states, despite being a great nation of 220 million people with a great civilization at the back. If our State actors continue to dwarfs their men, then history will dwarf them into a blackhole.

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